

In the United States  
**Circuit Court of Appeals**  
 For the Ninth Circuit

NORTH PACIFIC STEAMSHIP COMPANY,  
 a Corporation, Claimant of the  
 Steamship Yucatan,  
 Appellant,

vs.

THE STATE OF OREGON AND MULTNOMAH  
 COUNTY,  
 Appellees.

Upon Appeal From the District Court of the United  
 States for the District of Oregon.

HONORABLE R. S. BEAN, Judge.

**Brief of Appellee, Multnomah County**

SANDERSON REED and C. A. BELL

Proctors for Appellant

GEO. M. BROWN, Attorney General, and J. A. BECKWITH,  
 Proctors for the State of Oregon

WALTER H. EVANS, District Attorney, and  
 GEORGE MOWRY, Deputy District Attorney,  
 Proctors for Multnomah County.

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STATEMENT OF THE CASE.

On the third day of March, 1914, about noon, the Steamship Yucatan was lying alongside of the Globe Milling Company's dock on the east side of the Willamette River, at Portland, Oregon, and was tied up to this dock by means of a number of stern lines and head lines and was headed south or up-stream. The Willamette River at that point runs north and is about 600 feet in width. The north end of the Globe Milling Company's dock is 1300 feet south of the Broadway Bridge, which is a draw-bridge across the Willamette River. The

Yucatan was lying with her stern at a point 40 feet south of the north end of the Globe Milling Company's dock. (Ap. p. 173.) The Yucatan is 336 feet in length (Ap. p. 122) and has a tonnage of 3500 gross tons. (Ap. p. 120.) At the time in question the U. S. S. Boston, which is a vessel 277½ feet in length (Ap. p. 46), was lying in the Willamette River north and east of the Yucatan. The Boston was also headed up-stream and her bow was 71 feet north from the north end of the Globe Milling Company's dock (Ap. p. 50).

At the time above mentioned, the master of the Yucatan wished to leave the Globe Milling Company's dock, and to take the vessel down-stream through the Broadway Bridge. He accordingly attempted to turn the Yucatan around and to steer her bow-first through the bridge. The manner in which the master of the Yucatan undertook to leave the dock with the vessel is as follows:

A few minutes before the vessel was ready to leave, the captain put out a stern spring line from the offshore quarter on the starboard side of the vessel and ran this line around the stern and up the dock to a cleat on the dock about 150 feet south from the stern of the vessel, or about amidships; then he cast off all the lines except this stern spring line and started the engines slowly and kept this stern spring line tight, and this started the bow of the vessel swinging away from the dock. All the while that the vessel was swinging, the stern spring line was kept tight and this,

of course, drew the stern of the vessel up the dock.

This method that was employed by the master of the Yucatan in leaving the dock is well illustrated by his own testimony, as follows:

“A. That is the position the ship would be in when tied up to the dock; laying alongside of the dock, we have a line out from this quarter in here.

“COURT: A stern line.

“A. And another short line from here and in here—either way we can get hold of the dock—what we call our stern lines. Ahead here, we have a line from here, leading down this way, and another line leading up this way, our head line. When we get ready to leave, we run our stern spring from our offshore quarter.

“COURT: That is on the starboard side of the boat?

“A. That is on the starboard side of the boat, sir; up as far on the dock as we can, just about midships, I should judge about 150 feet, and heave this well tight on the capstan, steam capstan on the deck.” (Testimony of Capt. Paulsen, Ap. pp. 122, 123).

“Q. About where is that cleat or cavel on the dock? How far towards the Steel Bridge from the usual place?

(N. B.—The Steel Bridge referred to in this question is the draw-bridge just south of the Globe Milling Company’s dock.)

“A. I don’t know how long the dock is, but I should judge about 150 feet up the dock.

“Q. How long is the Yucatan?

“A. 336 feet.

“Q. You can guess then about where you took it up?

“A. About where.” (Testimony of Capt. Paulsen, Ap. pp. 121, 122.)

“A. After it (the stern spring line) comes over or comes aboard the steam capstan, and it is held tight, and when that is held tight, we let go everything, stern lines and head lines all together, and go very slow on the engines, and that brings the stern in towards the dock, say, about this way, and at the same time we heave on our stern spring. That will bring the stern up this way—up this way. We let go all our lines except that spring, and when the ship was about this far, I blew the first time for the bridge.

“Q. How far out was that?

“A. About 20 degrees, something like that. The bridge didn't open that time. I didn't pay much attention to it. I thought it would open when it got ready; and we kept on going at the same or swinging turn, until the ship was 80 or 90 degrees, and blew the second time for the bridge, the ship still swinging with the current and the wind, and still heaving on this line. When she came down this way, so we couldn't use our line any more, and just about here would be a proper time to let go, about 120 degrees, 110 or 120 degrees, which would have been the proper time to let go.” (Testimony of Capt. Paulsen, App. pp. 123, 124).

There is some conflict in the testimony as to the exact time when the master of the Yucatan cast off the stern spring line, but according to his own testimony he cast it off when the bow of the vessel was about 123 degrees off the dock (Ap. pp. 146, 147). By the time that he did cast off, the stern of the vessel had been drawn up the dock about 130 feet. (See testimony of Capt. Paulsen, Ap. pp 139, 140).

A very short time after this stern spring line was cast off, the Yucatan collided with the Boston. (See testimony of Captain Paulsen, Ap. p. 131). The first point of contact was on the starboard side of the Boston, at the forward gun sponson. (Ap. pp. 68 and 105). This sponson was about 75 feet north from the bow of the Boston (Ap. p. 48-49) and the Yucatan struck this sponson with her starboard after quarter. (See testimony of Gaven, Ap. pp. 67, 68). A few seconds thereafter, the starboard after quarter of the Yucatan collided with the six-inch gun on the starboard side of the Boston. (Testimony of Gaven, Ap. p. 68). This gun was situated approximately 85 feet from the bow of the Boston. (Ap. p. 176). At the time of the collision, the bow of the Yucatan (as appeared from models and testimony introduced at the trial) was toward the northwest and was more west than north. (Ap. pp. 70 and 131). It will thus be seen that the first point of collision was within 75 feet of the bow of the Boston, and that the second point of collision was about 85 feet from the bow of the

Boston. Therefore, since the distance from the north end of the Globe Milling Company's dock to the Broadway Bridge is 1300 feet (Ap. pp. 15 and 22), and the bow of the Boston was only 71 feet from the north end of this dock (Ap. p. 50), it is evident, in view of the position of the Yucatan at the time, that the Yucatan, at the time of the collision was more than 1000 feet away from the Broadway Bridge.

On May 25, 1914, the State of Oregon, lessee of the Boston, filed the within suit in admiralty against the Yucatan to recover for the damage which the Boston was alleged to have suffered by reason of this collision. Thereafter, the owner of the Yucatan filed a cross-bill against Multnomah County, alleging carelessness and negligence on the part of the operators of the Broadway Bridge. The cross-libelant claimed damages in the sum of \$1200. Thereafter the suit was tried and a decree was entered in favor of the libelant, State of Oregon, and dismissing the cross-libel.

The following is a copy of the opinion which was rendered by the District Court:

“The case of the Oregon v. the Steamer Yucatan was a libel filed by the State against the steamship to recover damages caused by it to the cruiser Boston. It seems that the cruiser Boston was lying at her moorings in the Willamette River between the Broadway Bridge and the old Steel Bridge, and on the 3rd of March of this year the Yucatan, which had been taking cargo at the Globe Milling

Company's dock a short distance above the Boston, cast off her lines, intending to proceed down the river through the bridge, and in doing so came in collision with one of the guns of the Boston, injuring the gun gear and damaging the vessel to some considerable extent and destroying a piano in the vessel, and for this the State, as lessee of the Boston under a contract with the general government by which it shall have possession of the cruiser and under a guarantee to protect the Government against any damage or loss, brought this libel against the Yucatan to recover damages due to the collision. The Yucatan filed a cross libel in which she claims that the operators of the Broadway Bridge were so negligent and careless in opening the draw that the vessel was unable to leave the dock at the proper time and therefore caused the collision.

“Now, the facts are not particularly in dispute. The Yucatan just before she started on her voyage put out a stern spring line, cast off all her other lines and when she was, or her bow was, at an angle of about twenty degrees from the dock she blew a signal for the opening of the Broadway Bridge, but the captain claims that the bridge didn't open and he allowed his vessel to swing around until about at right angles to the dock, when he blew another signal for the opening of the bridge, and his contention is that the operator paid no attention to that signal. He still allowed his vessel to swing until it was 120 or 130 degrees to the dock, when he cast off his spring line and gave the signal to his engines for full speed astern, but at that time the vessel was in such a position that the current and the

wind caused her to drift down against the Boston and caused this damage.

“Now, it is in evidence that the captain was attempting to manage this boat himself, notwithstanding an ordinance of the City requiring vessels in the harbor to be navigated by a local pilot. He didn't take such local pilot and undertook to manage the vessel himself in the stream, and I have no doubt that the injury was due to the fact that he was not familiar with the currents and winds of the harbor, and that on account of his want of knowledge of these two points he didn't let off the spring line soon enough and therefore caused the injury. So I take it that under the facts in this case the damage was due to the negligence and carelessness of the Yucatan, and I do not find from the testimony that the action of the operators of the Broadway Bridge had any contributing effect to the damage. If the captain had let off his line before he allowed his vessel to swing so far around, he could probably have swung without touching the Boston.

“It is also claimed that the Boston was negligent in allowing her gun to project at right angles to the vessel, but the evidence shows that is really the only position in which the gun could be, and in my judgment it was not a contributing fact to the damage, so that a decree will be entered in favor of the libelant and against the Yucatan for the amount of damages claimed, except the item of expense for an investigation that was held by an order, as I understand, of the War Department, or in pursuance of some regulation of the War Department after the injury, which amounted to forty or fifty dollars. That item will be disallowed.”

## BRIEF OF THE ARGUMENT.

(Rule 24, Sub. 3.)

The Appellant's Assignments of Error, which are thirteen in number, are set forth on pages 36-39 inclusive of the printed apostles, and are as follows:

## I.

Error of the Court in finding that there was negligence on the part of the master of the Yucatan in the matter of handling the Yucatan on leaving the Globe Dock.

## II.

Error of the Court in finding that the absence of a harbor pilot was negligence on the part of the master of the Yucatan.

## III.

Error of the Court in finding that the operators of the Broadway Bridge on the part of Multnomah County were not careless or negligent.

## IV.

Error of the Court in failing to find that the action of the operators of the Broadway Bridge contributed to the accident.

## V.

Error of the Court in not finding as to the position of the Boston in the fairway.

## VI.

Error of the Court in not finding that the pro-

jection of the guns from the Boston were against the local ordinances and regulations of the harbor.

#### VII.

Error of the Court in not finding that it was error on the part of the Boston to lie in the fairway with the guns projecting the number of feet shown in the testimony.

#### VIII.

Error of the Court in not finding as to the harbor regulations of the City of Portland, and the United States regulations as to the opening of draws on bridges in the City of Portland.

#### IX.

Error of the Court in not finding the facts as to how the damage to the launch on the Boston was caused.

#### X.

Error of the Court in not finding as to the damage to the Yucatan.

#### XI.

Error of the Court in not finding as to whether or not the draw was up or had begun to be lifted when the Yucatan put on full speed.

#### XII.

Error of the Court in rendering and entering a decree in favor of the libellant and against the Yucatan and the claimant.

## XIII.

Error of the Court in not rendering and entering a decree in favor of the claimant and against the libelant and the County of Multnomah for the amount claimed and proven by the claimant, or at least dividing the damages.

Of these assignments of error those numbered V, VI, VII and IX are of interest to the appellee, State of Oregon, but do not concern this appellee, Multnomah County.

As for Assignment of Error numbered II, we submit that the above quoted opinion of the trial court clearly shows that that Court did not find that the absence of a harbor pilot was negligence per se on the part of the master of the Yucatan. The Court did find, however, that as a matter of fact, there was no licensed pilot on board of the Yucatan, and that the captain attempted to manage the boat himself, all of which is admitted by the appellant to be true; and the Court further found that the captain was not familiar with the currents and winds of the harbor, and that on account of his want of knowledge of these two points, he did not let off the spring line soon enough, and therefore caused the injury, and that the damage was due to the negligence and carelessness of the Yucatan.

As for Assignment of Error No. VIII, there was no issue made by the pleadings in regard to the draw-bridge regulations mentioned in that assignment.

In Assignment No. XI, the appellant charges that the Court erred in not finding as to whether or not the draw was up or had begun to be lifted when the Yucatan put on full steam. In this connection, however, we respectfully call the attention of the Court to the testimony of A. C. Paulsen, captain of the Yucatan (Ap. pp. 124, 129), where he expressly admitted that he did not give the signal for full speed ahead until after the bridge had commenced to open.

The only Assignments of Error, therefore, that remain for the consideration of the appellee, Multnomah County, are those numbered I, III, IV, X, XII and XIII. For the convenience of the Court we desire at this time to set out in their order these six assignments just mentioned. They are as follows:

#### I.

Error of the Court in finding that there was negligence on the part of the master of the Yucatan in the matter of handling the Yucatan on leaving the Globe Dock.

#### III.

Error of the Court in finding that the operators of the Broadway Bridge on the part of Multnomah County were not careless nor negligent.

#### IV.

Error of the Court in failing to find that the action of the operators of the Broadway Bridge contributed to the accident.

## X.

Error of the Court in not finding as to the damage to the Yucatan.

## XII.

Error of the Court in rendering and entering a decree in favor of the libelant and against the Yucatan and the claimant.

## XIII.

Error of the Court in not rendering and entering a decree in favor of the claimant and against the libelant and the County of Multnomah for the amount claimed and proven by the claimant, or at least dividing the damages.

These six Assignments of Error, when summed up, amount merely to a contention by the appellant that the Court erred in finding that the master of the Yucatan was negligent and careless and caused the collision, and in not finding that the operators of the Broadway Bridge were negligent and careless and caused or contributed to the collision. The remainder of this brief will be devoted to answering this contention on the part of the appellant.

Throughout the course of this argument, this appellee will rely upon the following three propositions, namely:

1. That according to the draw-bridge regulations which the appellant pleaded and offered in evidence (Ap. pp. 14, 141), and which are set forth

in full on pages 226-230 inclusive of the Apostles, the Yucatan could not, at a distance of over 1000 feet from the Broadway Bridge, lawfully signal for the opening of the Broadway Bridge, until the vessel was actually **approaching** the bridge, and that at the time of the collision of the Yucatan with the Boston and during all the preceding time, the Yucatan was at a distance of more than 1000 feet from the Broadway Bridge, and that, in fact, and according to the appellant's own statement, the bridge was actually opening before the Yucatan began to **approach** the bridge.

2. That the Yucatan, at the time of each signal for the Broadway Bridge, and at the time of the collision, and during all the preceding time, was more than 1000 feet from the Broadway Bridge, and that under the draw-bridge regulations above mentioned, the operators of the bridge were not under any obligation to commence to open the bridge until the Yucatan was within 1000 feet of the bridge, but that, in fact, and according to the appellant's own statement, the bridge did commence to open before the Yucatan was within 1000 feet of the bridge, and that the bridge remained open from that time on until after the Yucatan had gone through the draw.

3. That the master of the Yucatan had no license as a pilot for the Portland harbor, and was violating the law by attempting to navigate the vessel himself without a licensed pilot on board, and

that when the Yucatan reached the point where she should have cast off her stern line, the bridge was already open, but that the master of the Yucatan was not familiar with the harbor and negligently failed to cast off at that point and by his own carelessness and unskillfulness brought about the collision.

We will now discuss the three points above mentioned in the order in which they are above set forth.

1. THAT ACCORDING TO THE DRAW-BRIDGE REGULATIONS WHICH THE APPELLANT PLEADED AND OFFERED IN EVIDENCE (Ap. pp. 14, 141), AND WHICH ARE SET FORTH IN FULL ON PAGES 226-230 INCL. OF THE APOSTLES, THE YUCATAN COULD NOT, AT, DISTANCE OF OVER 1000 FEET FROM THE BROADWAY BRIDGE, LAWFULLY SIGNAL FOR THE OPENING OF THE BROADWAY BRIDGE, UNTIL THE VESSEL WAS ACTUALLY **APPROACHING** THE BRIDGE, AND THAT AT THE TIME OF THE COLLISION OF THE YUCATAN WITH THE BOSTON AND DURING ALL THE PRECEDING TIME, THE YUCATAN WAS AT A DISTANCE OF MORE THAN 1000 FEET FROM THE BROADWAY BRIDGE, AND THAT, IN FACT, AND ACCORDING TO THE APPELLANT'S OWN STATEMENT, THE BRIDGE WAS ACTUALLY OPENING BEFORE THE YUCATAN BEGAN TO **APPROACH** THE BRIDGE.

The draw-bridge regulations in evidence in this case are set out in full in the printed Apostles, on

pages 226-230 incl. We call the attention of the Court to Sections 1, 2 and 6 of these regulations:

“Section 1. When, at any time during the day or night a vessel, unable to pass under the closed draw-span of any one of the above bridges, approaches it from a distance of over 1000 feet, the person in command of such vessel shall cause to be sounded, when said vessel shall be at a distance of not less than 1000 feet, the prescribed signal, and shall repeat this signal until it is understood at the bridge. (Ap. p. 227).

“Section 2. When such vessel is about to leave a landing 1000 feet or less from the draw-bridge, with the intention of passing through the draw, the person in command shall cause the prescribed signal to be sounded at such interval before leaving the landing that the draw may be opened in time for the vessel to pass. (Ap. pp. 227, 228.)

“Section 6. Upon hearing the signals hereinbefore prescribed, the engineer or operator of a draw-bridge shall promptly open the draw, except between the hours of 6:30 A. M. and 7 A. M., 7:15 A. M. and 7:45 A. M., 8:05 A. M. and 8:30 A. M., 5:15 P. M. and 5:45 P. M., and 6 P. M. and 6:30 P. M.; provided, that the draw shall be promptly opened for the passage of sea-going vessels of 250 tons or over upon the prescribed signal at any hour of the day or night; and provided further that when any vessel shall arrive at any bridge within five minutes before 6:30 A. M., 7:15 A. M., 8:05 A. M., 5:15 P. M., or 6 P. M., it shall be passed promptly through all the bridges in the direction in which it is moving and shall not be stopped between bridges.” (Ap. pp. 229, 230).

It is plain that section 2 of the above regulations applies only to such vessels as are about to leave a landing 1000 feet **or less** from the draw-bridge. In the case at bar, the record shows that the Yucatan was leaving a landing **more** than 1000 feet, to-wit: 1300 feet south from the Broadway Bridge. (App. pp. 15 and 22). Moreover, while the Yucatan was lying at this dock, her stern was 40 feet south from the north end of the dock. (Ap. p. 173). Consequently, the Yucatan was lying at a landing 1340 feet from the Broadway Bridge. It is clear, therefore, that section 2 of the regulations does not apply in this case.

Section 1 of the regulations applies only to such vessels as are **approaching** a draw-bridge from a distance of over 1000 feet. In this connection, we respectfully call the attention of the Court to the manner in which the Yucatan left the dock, as shown by the testimony. A few minutes before the vessel was ready to leave, as above stated in this brief, the captain put out a stern spring line from the offshore quarter on the starboard side of the vessel, and ran this line around the stern and up the dock to a cleat on the dock about 150 feet south from the stern of the vessel, or about amidships. Then he cast off all the lines except this stern spring line, and started the engines slowly, and kept this stern spring line tight, and this started the bow of the vessel swinging away from the dock. All the while that the vessel was swinging, the stern spring line was kept tight, and this

drew the stern of the vessel up the dock. (Testimony of Capt. Paulsen, Ap. pp. 121, 122, 123, 124). The vessel kept swinging in this manner, fastened all the while to the dock by this stern spring line, until the bow of the vessel was about 120 degrees off the dock. (Testimony of Capt. Paulsen, Ap. pp. 124 and 131). And when Captain Paulsen, the master of the Yucatan, finally did cast off this stern line, the bridge was already open. Note the following testimony:

“Q. I understand you to say, when you cast off, the draw was opening?

“A. Yes.

“Q. And that you cast off when you were about 123 degrees?

“A. 120 or 123 degrees. Between 120 and 130 degrees. (Testimony of Capt. Paulsen, Ap. pp. 136, 137).

“Q. And you cast off at the time you sounded the danger signal?

“A. No, I cast off as the bridge commenced to open.” (Testimony of Capt. Paulsen, Ap. p. 208).

We submit that a vessel swinging around as this vessel was swinging, fastened to the dock by a stern line, cannot be said to have been **approaching** the bridge. Instead of getting nearer to the bridge while making this turn, she was in reality getting farther away from the bridge, for by the time that this stern spring line was finally cast off, the stern of the vessel had been drawn up the dock 130 feet.

We quote the following testimony by Captain Paulsen:

“Q. How far from that 150 foot point was the extreme stern of the Yucatan when you let go? Was it pretty near to that cleat?”

“A. As far as I recall, it must have been—well, we used to let off up about 20 feet from the cleat, north of the cleat.” (Testimony of Capt. Paulsen, Ap. p. 139).

“Q. Well, the Yucatan was 337 feet long, and if she was 130 feet up the dock, the last 130 feet of the Yucatan would touch the dock, wouldn't it, if you hung on? It would have touched the dock, wouldn't it?”

“A. Yes.” (Testimony of Capt. Paulsen, Ap. p. 140).

Moreover, Captain Paulsen admits in the following testimony that he did not **start** for the bridge or get under way for the bridge until after the bridge commenced to open:

“A. . . . and a very short time after I blew the danger signal the bridge commenced to open, and I gave a bell for full ahead, full speed ahead.” (Testimony of Capt. Paulsen, Ap. p. 124).

“A. I still hung on to the stern line until I saw the bridge commence to open, and I could see I had a chance to go full ahead with the ship, and get away from the Boston on a port helm, as I explained.

“Q. So you then started for the opening?”

“A. For the draw, yes.” (Testimony of Capt. Paulsen, Ap. p. 129).

A plain construction of section 1 of the foregoing regulations, considered in connection with Section 6, above quoted, would seem to be that a vessel which is at a distance of over 1000 feet from a draw-bridge cannot lawfully signal for the opening of the bridge until she is actually **approaching** the bridge. We submit that up to the time when the Yucatan, in the case at bar, actually cast off her stern line, she was not an **approaching** vessel and had no right, under the regulations, to signal for the bridge. She was merely engaged in getting away from her landing and in **preparing to approach** the bridge. Yet, when she did cast off her stern line, the bridge, according to the captain's own testimony, was already opening. We therefore respectfully contend that the operators of the Broadway Bridge more than satisfied the requirements of the regulations.

2. THAT THE YUCATAN, AT THE TIME OF EACH SIGNAL FOR THE BROADWAY BRIDGE, AND AT THE TIME OF THE COLLISION, AND DURING ALL THE PRECEDING TIME, WAS MORE THAN 1000 FEET FROM THE BROADWAY BRIDGE, AND THAT UNDER THE DRAW-BRIDGE REGULATIONS ABOVE MENTIONED, THE OPERATORS OF THE BRIDGE WERE NOT UNDER ANY OBLIGATION TO COMMENCE TO OPEN THE BRIDGE UNTIL THE YUCATAN WAS WITH-

IN 1000 FEET OF THE BRIDGE, BUT THAT, IN FACT, AND ACCORDING TO THE APPELLANT'S OWN STATEMENT, THE BRIDGE DID COMMENCE TO OPEN BEFORE THE YUCATAN WAS WITHIN 1000 FEET OF THE BRIDGE, AND THAT THE BRIDGE REMAINED OPEN FROM THAT TIME ON UNTIL AFTER THE YUCATAN HAD GONE THROUGH THE DRAW.

The draw-bridge regulations above referred to provide in effect, that when at anytime during the day or night a vessel, unable to pass under the closed draw-span of any one of the bridges, approaches it from a distance of over 1000 feet, the person in command of such vessel shall cause to be sounded, when said vessel shall be at a distance of not less than 1000 feet, the prescribed signal, and shall repeat this signal until it is understood at the bridge, and that upon hearing such signal, the engineer or operator of the draw-bridge shall promptly open the draw. These regulations declare that the signal must be sounded when the vessel is at a distance of not less than 1000 feet from the draw. The regulations do not provide, however, what shall be the **greatest** distance from which a signal, when sounded, shall be a lawful signal which the operators of the bridge must promptly obey. It is the apparent meaning of these regulations that if the prescribed signal is given when the vessel is at a distance of not less than 1000 feet from the bridge, the operators of the bridge will thereupon

be charged with the duty of getting the bridge open in time to allow the vessel to pass through undelayed.

In the case at bar, the record shows that when the bow of the Yucatan started to swing away from the landing, her stern was 1340 feet from the bridge. (Ap. pp. 15 and 22 and 173). The captain of the Yucatan, himself, admits that by the time the bow of the vessel was about 120 degrees off the dock, the bridge was opening (Ap. pp. 146, 147 and 208, Testimony of Capt. Paulsen). By that time, the stern of the vessel had been drawn 130 feet up the dock and was therefore 1472 feet away from the bridge. (Ap. pp. 139, 140). From the time that the bridge commenced to open it took only about one minute to open it completely (Ap. pp. 146-180), and it remained open from that time on (Ap. p. 183). Consequently, it is obvious even from the testimony of the appellant's own witnesses, that the bridge opened while the vessel was considerably more than 1000 feet away. Therefore, even assuming for the purposes of the argument, that the Yucatan, while swinging away from the dock by her stern line, would be regarded as **approaching** the bridge, we still claim that the operators of the bridge more than complied with the regulations.

3. THAT THE MASTER OF THE YUCATAN HAD NO LICENSE AS A PILOT FOR THE PORTLAND HARBOR, AND WAS VIOLATING THE LAW BY ATTEMPTING TO NAVIGATE THE VESSEL HIMSELF WITHOUT A LICENSED PILOT ON BOARD, AND THAT

WHEN THE YUCATAN REACHED THE POINT WHERE SHE SHOULD HAVE CAST OFF HER STERN LINE, THE BRIDGE WAS ALREADY OPEN, BUT THAT THE MASTER OF THE YUCATAN WAS NOT FAMILIAR WITH THE HARBOR AND NEGLIGENTLY FAILED TO CAST OFF AT THAT POINT AND BY HIS OWN CARELESSNESS AND UNSKILLFULNESS BROUGHT ABOUT THE COLLISION.

Section 4401 Rev. Stat. U. S., is as follows:

“All coastwise sea-going vessels, and vessels navigating the great lakes, shall be subject to the navigation laws of the United States, when navigating within the jurisdiction thereof; and all vessels, propelled in whole or in part by steam, and navigating as aforesaid, shall be subject to all the rules and regulations established in pursuance of law for the government of steam-vessels in passing, as provided by this Title; and every coastwise sea-going steam vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall when underway, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats.”

Section 4438 Rev. Stat. U. S., is as follows:

“The boards of local inspectors shall license and classify the masters, chief mates and second and third mates, if in charge of a watch, engineers and pilots of all steam vessels, and the masters of sail vessels of over seven hundred gross tons, and all other vessels of over one hundred gross tons carrying passengers for hire. It shall be unlawful to

employ any person or for any person to serve as a master, chief mate, engineer, or pilot of any steamer or as master of any sail vessel of over seven hundred gross tons or of any other vessel of over one hundred gross tons carrying passengers for hire who is not licensed by the inspectors; and anyone violating this section shall be liable to a penalty of one hundred dollars for each offense.”

The Yucatan is a coastwise sea-going steam vessel of a gross tonnage of 3500 tons (Testimony of Captain Paulsen, Ap. p. 120). It is admitted in the pleadings and shown by the evidence that on the day of the collision, the master of the Yucatan did not have a license as a pilot for the Portland harbor, and that there was no licensed pilot on board the vessel, and that at the time of the collision the master of the Yucatan was attempting to navigate the vessel himself in violation of both of the above quoted statutes. (Ap. pp. 6, 10, 119, 120.) It follows, therefore, that since the Yucatan was violating a statutory rule, the burden is upon her of showing that her fault could not have been a contributing cause of the collision.

The Beaver, 219 Fed. 134, 138.

7 Cyc. 370.

The Santa Clara, 21 Fed. Cas. No. 12, 327.

The Pennsylvania, 19 Wall. (U. S.) 125, 136.

The City of Washington, 92 U. S. 31.

The Admiral Schley, 142 Fed. 64.

The Ellis, 152 Fed. 981.

In the language of the Circuit Court of Appeals for the Ninth Circuit, in the case of "The Beaver," 219 Fed. 134, 138:

"Where a vessel has committed a positive breach of a statutory duty, she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so."

The Beaver, 219 Fed. 138 (Adv. Sheets) (Decided Jan. 4, 1915).

We claim that in the case at bar, the evidence fully justifies the findings of the trial court to the effect that the collision was brought about entirely by Captain Paulsen's want of familiarity with the Portland harbor, and by the careless and negligent manner in which he handled the Yucatan and by his failure to cast off the stern line at the proper time.

The appellant contends, however, that when the Yucatan reached the point where she should have let go of her stern line, the bridge had not yet begun to open. This is the only ground on which the owner of the Yucatan attempts to hold Multnomah County liable. The contention which is thus made by the appellant is not in any manner supported by the evidence. In this connection, we respectfully call the attention of the Court to the following testimony on the question as to what would have been the proper time for the Yucatan to cast off:

On page 204 of the Apostles, we find the following testimony by Captain W. W. Pope:

“Q. Now, based on your experience as a pilot, in turning around the Yucatan at that place, under those circumstances, and in that manner, to go through the Broadway Bridge, at what time should the pilot cast loose from the stern line and head out for the draw?

“A. Well, I should say from 100 to 120 degrees. . . .

“Q. If the bridge was opening, when he reached 120 degrees, he should have let go?

“A. Sure.”

And on page 124 of the Apostles, we find the following testimony, as given by A. C. Paulsen, captain of the Yucatan:

“When she came down this way, so we couldn't use our line any more, and just about here would be a proper time to let go, about 120 degrees, 110 or 120 degrees, which would have been the proper time to let go.”

It thus appears that Captain Paulsen, of the Yucatan, agrees with Captain Pope that a point of from 100 to 120 degrees off the dock would have been the proper place for the Yucatan to let go her stern line, but, in the very next breath, Captain Paulsen adds that when the Yucatan reached a point of 120 degrees the bridge had not yet commenced to open. (See Ap. p. 124). At this time, therefore, we desire to call the attention of the

Court to the following testimony in the record, as to the position of the Yucatan when the bridge did commence to open.

TESTIMONY OF ROBERT B. SMITH, FOREMAN OF THE BROADWAY BRIDGE.

“Q. Which way was the Yucatan pointed when he gave his first signal?

“A. If the river was north and south, she pointed south.” (Ap. p. 181).

“Q. Now what position was the Yucatan in when you opened the draw?

“A. Well, sir, as near as I could see, I would say due west; maybe a trifle to the south, may have been a trifle to the north, but I am positive that she was looking to the west.

“Q. And did the bridge remain open from that time on until she got through?

“A. It did, sir.” (App. pp. 182, 183).

“Q. Just one question I want to clear up. You are clear in your own mind as to the direction in which the boat was pointing when the draw did open?

“A. I am clear, sir.

“Q. What direction was it?

“A. When the draw was open?

“Q. Yes.

“A. Due west, sir.” (Ap. p. 189).

It thus appears from the testimony of Mr. Smith, foreman of the bridge, that the bridge was open

when the Yucatan reached a point 90 degrees off the dock, and that the bridge remained open from that time on until after the Yucatan had gone through the bridge.

But particularly interesting is the testimony of the master of the Yucatan, Captain Paulsen, himself, as to what was the position of the Yucatan when the bridge opened. We respectfully call the attention of the Court to the following excerpts from Captain Paulsen's testimony:

TESTIMONY OF CAPTAIN A. C. PAULSEN,  
Master of the Yucatan.

“A. When she came down this way, so we couldn't use our line any more, and just about here would be a proper time to let go, about 120 degrees, 110 or 120 degrees, which would have been the proper time to let go, but the bridge wasn't open, when I blew the danger signal, and a very short time after I blew the danger signal, the bridge commenced to open.” (Testimony of Captain Paulsen, Ap. p. 124).

“A. I still hung on to the stern line until I saw the bridge commence to open.” (Testimony of Captain Paulsen, Ap. p. 129).

“Q. At what angle were you when you cast off your spring line, Captain Paulsen, as near as you recollect?”

“A. About 120 degrees—90 degrees would be pointing right across the river.

“Q. Would be right angles?”

“A. And just about 30 degrees more.” (Testimony of Captain Paulsen, Ap. p. 131).

(N. B.—Captain Paulsen in his testimony used the term “stern line” and “spring line” interchangeably.)

“Q. I understand you to say, when you cast off, the draw was opening?

“A. Yes.

“Q. And that you cast off when you were about 123 degrees?

“A. 120 or 123 degrees. Between 120 and 130 degrees.” (Testimony of Captain Paulsen, Ap. pp. 146, 147).

“Q. And you cast off at the time you sounded the danger signal?

“A. No, I cast off as the bridge commenced to open.” (Testimony of Captain Paulsen, Ap. p. 208).

We submit that if the above testimony by Captain Paulsen means anything at all, it clearly means that the proper time, in his judgment, to cast off was when the Yucatan was at a point of about 120 degrees, and that he did cast off when the Yucatan was at a point of about 120 degrees, and that when the Yucatan was at this point of about 120 degrees, where he should have cast off and did cast off, the bridge was already open. In other words, according to Captain Paulsen’s own testimony, the bridge opened as soon as it should have opened. If all of these statements by Captain Paulsen are true, it is

difficult to see what fault the owner of the Yucatan can possibly find with the operators of the bridge.

Moreover, the **cross-libel** of the appellant **alleges** that the Yucatan did not cast off until after the bridge commenced to open (Ap. pp. 14, 15), and this allegation, taken in connection with Captain Paulsen's testimony as above given, to the effect that he cast off at 120 degrees, and that 120 degrees was the proper place to cast off, is conclusive as an admission on the part of the appellant that the bridge opened soon enough. As stated in Vol. I, Corpus Juris, p. 1335:

“In admiralty, a party's averments are admissions by him and need no proof, unless denied and put in issue, and neither party can contradict by proof the averments set forth in his pleading.”

See also:

1 Cyc. 886.

Totten v. The Pluto, 24 Fed. Cas. No. 14, 106.

In view of the testimony and pleadings above quoted and referred to, we confidently assert that the record in this case clearly shows that the owner of the Yucatan has no just reason to complain of the Broadway Bridge. The captain of the Yucatan says he cast off at about 120 degrees. He also says that that was the proper time to cast off. It is admitted by the pleadings and shown by the appellant's own evidence that the bridge was open at that time and remained open from that time on. Captain Pope, the pilot called by the County, says that

the proper place for the Yucatan to cast off was at a point of from 100 to 120 degrees (Ap. p. 204), and Robert B. Smith, the foreman of the bridge, testifies that the bridge was open at the time when the Yucatan reached a point of only 90 degrees, and that the bridge remained open from that time until after the Yucatan had passed through the bridge. (Ap. pp. 182, 183, 189). It is admitted by all concerned that the collision did not happen until after the Yucatan had cast off. It is clear, therefore, under any view of the circumstances, that the operators of the bridge could not have been in any manner to blame for this collision.

At the time of the collision, the captain of the Yucatan was violating the statute by not having a licensed pilot on board. The burden is therefore upon him of showing that his own negligence could not have caused the accident. (The Beaver, 219 Fed. 138). We submit that he has failed to show this. The testimony, instead, clearly proves, as found by the District Court, that the Captain of the Yucatan was not familiar with the currents and winds of the harbor, and that his own negligence and carelessness were the sole cause of the collision.

Counsel for the appellant, however, lays much stress on the fact that the bridge did not open until fourteen minutes after the first signal was given. It is also claimed by appellant that this first signal was given when the Yucatan was about 20 degrees off the dock. In this connection, however, we desire to point out that, according to the testimony,

the vessel had not yet begun to swing away from the dock when the first signal was given, and that it took Captain Paulsen considerably more than fifteen minutes thereafter to turn the vessel around. We call the Court's attention to the following testimony:

“Q. Now, Captain, state what line it was that was used by you on the third of March at this time, what line was cast off, and lines were used?

“A. Why, getting under way, you mean?

“Q. Yes, when you left the Globe Dock.

“A. Well, about five minutes before we got ready to leave the dock we run out what we call a stern spring.” (Testimony of Captain Paulsen, Ap. p. 121).

“Q. How soon did you cast off before you actually started to turn?

“A. I blew the whistle first for the bridge, then we let go our lines and the ship started in to swing.” (Testimony of Captain Paulsen, Ap. p. 132).

“Q. I would like to get this into the record, the questions and answers: ‘Q. Just what time did your clock say that you blew for the Broadway Bridge? A. Twelve o'clock we let go of the head lines, in order to swing the ship around, hanging on to our stern line. Q. Then what happened? A. The ship being about 20 degrees off the dock, I blew the second whistle for the bridge to open, but no attention was paid from the bridge.’ Now did you give that testimony?

“A. I did.” (Testimony of Captain Paulsen, Ap. p. 134).

We think the above testimony by Captain Paulsen plainly indicates that the Yucatan blew the first signal for the bridge before the bow of the vessel had started to swing away from the dock.

But even granting, for the sake of argument, that the first whistle for the bridge was blown when the Yucatan was 20 degrees off the dock, and that the bridge did not open until fourteen minutes thereafter, yet, even under that view of the matter, considered in connection with Captain Paulsen's statement, as above pointed out, to the effect that when the Yucatan reached a point of 120 degrees off the dock the bridge was opening, the obvious conclusion must be that it took the Yucatan fourteen minutes to swing from a point 20 degrees off the dock, to a point 120 degrees off the dock. Note again the following testimony by Captain Paulsen:

“A. We let all our lines go except that spring, and when the bridge was about this far, I blew the first time for the bridge.

“Q. How far was that?

“A. About 20 degrees, something like that. The bridge didn't open that time. I didn't pay much attention to it. I thought it would open when it got ready; and we kept on going at the same or swinging turn, until the ship was about 80 or 90 degrees, and I blew the second time for the bridge, the ship

still swinging with the current and the wind, and still heaving on this line. When she came down this way, so we couldn't use our line any more, and just about here would be a proper time to let go, about 120 degrees, 110 or 120 degrees." (Testimony of Captain Paulsen, Ap. pp. 123, 124).

"Q. At what angle were you when you cast off your spring line, Captain Paulsen, as near as you recollect?

"A. About 120 degrees—90 degrees would be pointing right across the river." (Testimony of Captain Paulsen, Ap. p. 131).

"Q. And you cast off at the time you sounded the danger signal?

"A. No, I cast off as the bridge commenced to open." (Testimony of Captain Paulsen, Ap. p. 208).

The above testimony clearly shows that during the time that the vessel was swinging from the point of 20 degrees to the point of 120 degrees, there was no delay or trouble, but that the vessel was swinging all the while in the manner that her captain wanted her to swing and at the rate of speed that he approved of; and if we are to consider as true the above quoted portion of the captain's testimony, and are also to concede that from the time when the Yucatan reached a point 20 degrees off the dock, it was fourteen minutes until the bridge began to open, we must necessarily believe that it took the Yucatan fourteen minutes to swing from a point of

20 degrees to a point of 120 degrees, at which point last mentioned the bridge, according to Captain Paulsen's own testimony, did begin to open.

Counsel for the appellant evidently proceed on the theory that the Broadway Bridge ought to have been open during the whole of this space of fourteen minutes while the Yucatan was engaged in making this leisurely turn. There might be some reason in this theory, were it not for the fact that the Broadway Bridge is a city thoroughfare as well as an alleged obstruction to navigation, and that, as shown by the pleadings, and indeed as a matter of common knowledge, this bridge is constantly traversed at all hours of the day by street cars, pedestrians and vehicles in large numbers. As was said by the Court in the case of *Gilman v. Philadelphia*, 70 U. S. (3 Wall.) 713, 729:

“It must not be forgotten that bridges, which are connecting parts of turnpikes, streets and railroads, are means of commercial transportation, as well as navigable water, and that the commerce which passes over a bridge may be much greater than would ever be transported on the water it obstructs.”

(See 4 A. & E. Encyc. of Law (2d Ed.), 924.)

And in the case of *Scott v. Chicago*, Fed. Cas. 12526 (1 Biss, 510) (21 Fed. Cas. 814, 815), the Court said:

“The right of navigation does not take away the right of crossing the river . . . The two rights co-exist and each one must be construed with refer-

ence to the other, precisely as we qualify the right to travel along a street by the right to cross it. The navigator must yield something to the foot-passenger, just as the latter must yield something to the navigator.”

And in the language of the Court in the case of *Columbus Ins. Co. v. Peoria Bridge Association*, Fed. Cas. No. 3046) (6 McLean 70), 6 Fed. Cas. 191, 192:

“It must be considered as settled that the right to a free navigation of our Western rivers, and the right of the State to adopt those means of crossing them which the skill and ingenuity of man have devised, as both are equally important, are co-existent, and neither can be permitted to destroy or essentially impair the other.”

In the case of *United States v. T. J. Cleeton, County Commissioners, et al.*, tried in the United States District Court for the District of Oregon, April 24, 1911 (not reported), Judge Bean gave the following instructions to the jury:

“It is the duty of persons operating a draw-bridge, under the statute to which I have alluded (Act of August 18th, 1894, 28 St. L. 362) to open or cause it to be opened without unreasonable delay after the proper signals have been given, and what constitutes unreasonable delay is to be determined with reference to the state of the traffic at the time, the construction of the draw and the conditions existing at the time the signal is given by the boat.”

We also quote as follows from the case of *Escanaba Co. v. Chicago*, 107 U. S. 678, 682:

“Ten minutes is ample time for any vessel to pass the draw of a bridge, and the allowance of more time would subject foot passengers, teams and other vehicles to great inconvenience and delays. . . . The rights of each class are to be enjoyed without invasion of the equal rights of others. Some concession must be made on every side for the convenience and the harmonious pursuit of different occupations.”

In the case at bar, the evidence conclusively shows that the bridge was open before the *Yucatan* reached the point where she should have cast off her stern line. The evidence also shows that from that time on, the bridge remained open until after the *Yucatan* had passed through the draw. The bridge was therefore open soon enough and long enough.

For the purpose of sustaining its contention that the appellee, Multnomah County, is liable in this suit, the appellant has cited the following cases:

*Greenwood v. Westport*, 60 Fed. 560; 53 Fed. 824.

*Etheridge v. Philadelphia*, 26 Fed. 43.

*City of Boston v. Crowley*, 38 Fed. 202.

We do not deem it necessary to enter into an extended discussion of any of these cases, for, in our judgment, none of them is in point in this case. In the case of *Greenwood v. Westport*, the facts were

that the town of Westport maintained and operated a draw-bridge across a stream which was navigable only at high tide. The libelant's barge approached the bridge about high-water and signaled for the opening of the draw. The draw-tender was absent, and one of the selectmen of the town undertook to open the draw; failing in his attempt, he discovered that it was locked underneath and he then procured a boat and opened the draw. In the meantime the barge had been delayed about half an hour, the tide had fallen some six inches, and, while passing through the draw, the barge struck on the bottom and sank, suffering serious injury. It was held that there was negligence on the part of the town. In the case of *Etheridge v. City of Philadelphia*, the facts were that a schooner was passing through the draw-bridge in question in the case. Those in charge of the bridge, owing to its being out of order were unable to fasten the draw securely. It got beyond their control, swung around, struck and damaged the schooner. And it was held that the municipal corporation owning the bridge was responsible for the negligence. The case of *City of Boston v. Crowley* was a case in which the city owning a bridge was held liable for damages for having failed to maintain a draw of the width which the law required. The three cases just discussed are the only cases cited by the appellant in support of its claim against Multnomah County in the case at bar. No facts, however, such as were involved in any of those cases are found in this case. In this

case, the collision in question happened over 1000 feet away from the bridge. The bridge was open at the time of the collision and before the collision. Indeed, as above pointed out in this brief, the bridge was open before the Yucatan began to **approach** the bridge. Moreover, it clearly appears from the evidence that the bridge opened before the vessel reached the point where she should have cast off her stern line. And, finally, it is virtually admitted by the captain of the Yucatan, himself, that the bridge opened as soon as it should have opened.

We submit that in this case only one conclusion can be reached, and that conclusion must be that the collision was caused entirely by the negligence and unskillfulness of the captain of the Yucatan. This was not the first time that this captain had shown himself to be an imprudent navigator. Only a few months before, according to his own testimony, he had recklessly run a vessel aground at San Diego. (Ap. pp. 137, 138.) At the time of the collision in the case at bar, he was not familiar with the Portland harbor and had no license as a pilot for the harbor, and he was violating the law by failing to have a licensed pilot on board. Attempting to navigate the vessel himself, he failed to cast off the stern line at the proper time, and by his own negligence and lack of skill he brought misfortune to his own vessel and to the Boston.

The owner of the Yucatan must therefore stand the loss. As was said by the Court in the case of *Jolly et al v. Terre Haute Drawbridge Company*,

Fed. Cas. No. 7441 (6 McLean, 237), 13 Fed. Cas. 919, 922:

“It will therefore be a proper inquiry for the jury, whether the plaintiffs’ boat, in passing the bridge, was managed with ordinary skill and caution. For, conceding the bridge to be an unlawful obstruction, yet if the plaintiffs’ injury is clearly referable to the reckless and unskillful management of the plaintiffs’ boat, the draw-bridge company are not responsible for such injury.”

And in the same case (Jolly et al v. Terre Haute Drawbridge Company, Fed. Cas. No. 7441, 13 Fed. Case. 919, 922), the Court used the following language:

“It is proper here to remark, in reference to the pilot of the plaintiffs’ boat, that the evidence is satisfactory as to his professional character. He had served in that capacity for some years, on the Wabash, and it is in proof that he is esteemed a safe, prudent and skillful pilot. But notwithstanding this evidence of general good professional reputation, if in this particular case he evinced recklessness and want of skill, and the injury to the plaintiffs’ boat is attributable to that cause, they must bear the consequences of his misconduct.”

In the present case, of course, as in all cases, there is some conflict in the testimony. The district judge who tried the case, however, had the opportunity of seeing the different witnesses and hearing their testimony, and we feel confident that his decision will not be set aside. In the language of the Circuit Court of Appeals for this circuit, in

the case of *The Alijandro*, 56 Fed. 621, as quoted and followed in the case of "*The Samson*" (Ninth Circuit, decided October 13, 1914), 217 Fed. 344, 347:

"The rule is well settled that in cases on appeal in admiralty, when the questions of fact are dependent upon conflicting evidence, the decision of the district judge, who had the opportunity of seeing the witnesses and judging their appearance, manner and credibility, will not be reversed, unless it clearly appears that the decision is against the evidence."

*The Samson*, 217 Fed. 344, 347.

*Reed v. Weule*, 176 Fed. 660.

*Peterson v. Larsen*, 177 Fed. 617.

*The Bailey Gatzert*, 179 Fed. 44.

We respectfully urge that the decree of the District Court should be affirmed.

Respectfully submitted,

WALTER H. EVANS,

District Attorney,

GEORGE MOWRY,

Deputy District Attorney,

Proctors for Multnomah County.

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